

N.D.A.G. Letter to Lies (Aug. 13, 1992)

August 13, 1992

Mr. Steven J. Lies
Wahpeton City Attorney
P.O. Box 275
Wahpeton, ND 58074-0275

Dear Mr. Lies:

Thank you for your June 22, 1992, letter wherein you inquire whether a county may initiate a proceeding which modifies or eliminates an ad valorem tax exemption granted by a city under N.D.C.C. ch. 40-57.1.

Enclosed is a copy of a March 14, 1990, letter to Mr. Larry Quast, Stanton City Attorney, wherein I concluded that a county may initiate a proceeding to eliminate an exemption granted by a city under N.D.C.C. ch. 40-57.1 if the exemption was improperly granted.

However, there is no authority for a county to modify an exemption that was properly granted by a city under N.D.C.C. ch. 40-57.1.

N.D.C.C. § 40-57.1-03 provides, in pertinent part:

40-57.1-03. Municipalities' authority to grant tax exemption - Notice to competitors - Limitations. Municipalities are hereby authorized and empowered, in their discretion, as limited hereafter, to grant, after negotiation with a potential project operator, partial or complete exemption from ad valorem taxation on all tangible property used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations.

(Emphasis supplied.)

"Municipality" means counties as well as cities. N.D.C.C. § 40-57.1-02(2).

Therefore, if a qualifying project is to be located within a city, it is the city which has the discretion to grant a partial or complete exemption. That discretion is granted to a county only when a qualifying project is to be located outside the limits of a city.

Sincerely,

Nicholas J. Spaeth

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Enclosure